

TITLE 14 NYCRR PART 803

[Statutory Authority: Mental Hygiene Law Sections 19.05, 19.07(e), 19.09(b), 19.40, 32.01, 32.07(a), Public Officers Law Article 6; Executive Law Section 102]

Notice: The following regulations are provided for informational purposes only. The Office of Alcoholism and Substance Abuse Services makes no assurance of reliability. For assured reliability, readers are referred to the *Official Compilation of Rules and Regulations*.

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Section 803.1 Statement of purpose.

The purpose of this Part is to set forth the methods and procedures governing the nature, availability and location of those records of the New York State Office of Alcoholism and Substance Abuse Services which are covered by the Freedom of Information Law (Article 6 of the Public Officers Law) and the rules of the New York State Committee on Public Access to Records (21 NYCRR Part 1401).

Section 803.2 Definitions.

As used in this Part, the following terms as defined:

- (a) "Business day" means the regular hours that the records access office is open on any day except Saturdays, Sundays and public holidays.
- (b) "Record" means any information kept, held, filed, produced or reproduced by, with, or for the Office in any physical form whatsoever, including, but not limited to,

reports, statements, examinations, memoranda, folders, files, books, brochures, manuals, pamphlets, forms, papers, designs, drawings, maps, photographs, letters, microfilms, computer tapes, discs, cartridges or other means of storing information.

(c) "Records Access Officer" means the duly designated person to whom requests for access to Office records shall be made.

(d) "Records Access Appeals Officer" means the duly designated person to whom appeals from the decisions of the records access officer shall be addressed.

(e) "Subject matter list" means a reasonably detailed current list of all Office records arranged by subject matter, regardless of whether or not such records are available to the public pursuant to Section 87(2) of the Public Officers Law, which is sufficiently detailed to permit identification of the category of any record sought.

803.3 Records Access Officer.

(a) The Records Access Officer of the Office is the Public Information Officer.

(b) All requests for access to Office records shall be addressed as follows: Public Information Officer, New York State Office of Alcoholism and Substance Abuse Services, 1450 Western Avenue, Albany, NY 12203-3526

(c) The Records Access Officer shall have the following responsibilities:

(1) to ensure that a current subject matter list of all Office records is maintained and that such list is brought up to date at least twice each year.

(2) to offer assistance to any person requesting access to Office records in the identification of the record or records requested.

(3) to search for the records requested, and if unable to locate them, shall:

(i) certify that the Office is not the custodian of the record requested; or

(ii) certify that, although the Office is the custodian of the record requested, the record cannot be found after a diligent search;

(iii) certify that the requested record is not available because it is beyond the time period of the agency's record retention policy.

(4) to determine, after locating the records, that:

(i) the record is available for public inspection, and make it available for inspection and/or copying; or

(ii) the record is not available for public inspection for any of the reasons set forth in section 87(2) of the Public Officers Law and deny access in accordance with 803.8 of this Part.

Section 803.4 Times and places for inspection of Office records.

Office records or copies thereof for which requests for access have been approved may be inspected on business days at locations specified by the Records Access Officer between 9:00 a.m. and 4:30 p.m.

Section 803.5 Fees for copying records.

(a) Except when otherwise prescribed by law, the fee for photocopying Office records shall be 25 cents per page for photocopies not exceeding 9 by 14 inches, or the actual reproduction cost if higher. However, any such fee may be waived or reduced at the discretion of the Records Access Officer.

(b) If for any reason a photocopying machine is not available and the person requesting access to an Office record requests a transcript of such record, either typewritten or handwritten, a fee for the clerical time involved in making such transcript may be charged.

(c) The fees for copies of records not covered by paragraphs (a) and (b) of this subdivision shall not exceed the actual reproduction cost which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

(d) There shall be no fee charged for any of the following:

- (1) inspection of a record;
- (2) a search for any Office record; or
- (3) the certification of any record.

(e) The payment of any photocopying or transcribing fee for any Office record shall be in the form of cash, check, bank draft or money order payable to the New York State Office of Alcoholism and Substance Abuse Services.

Section 803.6 Procedures for obtaining access to Office records.

(a) Request for access to Office records.

(1) Any request for access to a record or records shall be made to the Records Access Officer and must be in writing.

(2) Each such request shall describe the record or records sought as reasonably as possible with information regarding dates, file designations and any other available data which will be held in the search for the record or records.

(b) Responding to requests.

(1) The Records Access Officer shall respond to every request for access to Office records within 5 business days after receipt of such request.

(2) Every such response shall be in writing and shall indicate:

(i) approval of the request;

(ii) denial of the request; or

(iii) acknowledgment of the request indicating that there will be a delay in responding to the request, stating reasons for the delay and an estimate of the date when the record or records requested will be available for inspection, if approved.

Section 803.7 Approvals of requests.

(a) Every request for access to Office records shall be granted except where there are grounds for denial. In addition to those listed in Section 87 of the Public Officers Law, also known as the Freedom of Information Law, other grounds for denial include, but are not limited to, provisions of other Federal and State statutes and regulations.

(b) The written response approving any request for access to Office records shall indicate the time and place where the record or records may be inspected.

(c) The original or file copy of any releasable Office record shall not be released by the Office but may be inspected by any person in the presence of the Records Access Officer or other designated employee of the Office.

(d) If requested, a photocopy of any releasable Office record shall be furnished by the Records Access Officer to any person upon payment of the appropriate fee in accordance with the provisions of Section 803.5 of this Part.

(e) Upon request, the Records Access Officer shall certify that any Office record being inspected, or a copy thereof, is a true copy.

Section 803.8 Denials of requests.

(a) Any denial of a request for access to Office records shall be by written notice and such notice shall:

- (1) state the reasons for the denial;
- (2) advise the person making the request that such denial may be appealed to the Records Access Appeals Officer;
- (3) advise the person of the name, business address and telephone number of the Records Access Appeals Officer; and
- (4) advise that any such appeal must be made within 30 days after the date of the denial notification.

Section 803.9 Appeals of denials of access to Office records.

(a) Records access appeals officer. The Records Access Appeals Officer for the Office shall be the OASAS General Counsel.

(b) Appealing a denial of access.

(1) Any person who has been denied access to Office records may make a written appeal within 30 days of the date of such denial to the Records Access Appeals Officer.

(2) Any such written appeal shall be addressed as follows: Division of Legal Affairs, New York State Office of Alcoholism and Substance Abuse Services, 1450 Western Avenue, Albany, NY 12203-3526.

(3) Every such written appeal shall contain:

- (i) the date of the original request for access to Office records;
- (ii) a description of the record or records to which access was denied;
- (iii) the reason or reasons stated in the denial notice; and
- (iv) the name and return address of the person appealing the denial.

(c) Responding to appeals.

(1) Within 10 business days after receipt of any written appeal, the Records Access Appeals Officer shall review the matter, shall affirm, modify or reverse the denial and shall notify the appellant of the determination.

(2) If the Records Access Appeals Officer determines that there are sufficient grounds to review the denial, the Records Access Officer shall be instructed to allow prompt inspection or copying of the record or records requested. The notification to the appellant shall contain the time and place where the inspection or copying may be made.

(3) If the Records Access Appeals Officer upholds the denial, the notification to the appellant shall contain the reasons for the determination and shall inform the appellant of the right to a judicial review of the matter pursuant to article 78 of the New York Civil Practice Law and Rules.

(d) Notification of Committee on Open Government.

(1) Whenever the Records Access Appeals Officer receives an appeal of a denial of access to Office records, a copy of such appeal shall be sent to the Committee on Open Government, Department of State, 41 State Street, Albany, NY 12231.

(2) The Committee on Open Government shall be notified in writing of the final decision of the Records Access Appeals Officer. The notification shall contain the reasons for the final decision.

Section 803.10 Public notice.

(a) Notices shall be posted in conspicuous locations in the Office central office, each Office regional office and in each State operated addiction treatment center which will indicate the following:

(1) Locations where Office records shall be made available for inspection and copying.

(2) The name, title, business address and business telephone of the Office Records Access Officer.

(3) The right of appeal by any person denied access to Office records and the name, title and business address of the Records Access Appeals Officer.

Section 803.11 Trade secrets.

(a) Trade secrets received in conjunction with applications for Office approval, funding or certification.

(1) Information or documents constituting trade secrets required to be submitted as part of applications to the Office for approval, funding and/or certification shall be identified in writing by the applicant as a trade secret prior to or at the time of submission of the application to the Office.

(2) After receipt of a request that information or documents be exempt from disclosure as trade secrets, the Records Access Officer shall review the sufficiency of such request. If the Records Access Officer determines that the information or documents do not constitute a trade secret, a written determination shall be issued denying the request and stating the reasons for the denial. Appeals from denials are governed by Section 89, subparagraph (5)(c)(1) of the Public Officers Law.

(3) Information or documents identified by an applicant as a trade secret and so designated by the Office shall be distributed outside the Office only to the local government unit and health systems agency as required by Sections 32.29 and 32.31 of the Mental Hygiene Law.

(4) Except as provided in subdivision (b) of this section, information and documents identified as trade secrets shall be given only to employees or others acting as agents of the Office who need such information and/or documents in connection with the review of such application.

(5) The Office and/or its agents shall not use said information or documents designated as trade secrets for any purpose other than the appropriate review of the application.

(6) Information and documents identified as trade secrets shall be returned to the applicant if the application is disapproved. If the application is approved, the information and documents containing trade secrets shall be sealed and stored separately from other application materials and reasonably secured from access by unauthorized persons.

(7) Any request for access to information or documents containing trade secrets shall be dealt with in accordance with the Freedom of Information Law (subdivision (3), (4) and (5) of Section 89 of the Public Officers Law). All such requests for access shall be directed to the Office's Records Access Officer.

Section 804.11 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remaining provisions of this Part or the application thereof to other persons or circumstances.